BRIEF IN SUPPORT OF PETITION.

Statement of Facts.

The facts in so far as they are material to this Petition for the Writ of Certiorari, are as follows:

The Petitioner is not a dealer. He sold a limited number of combines, which were used for the purpose of harvesting grain, to his neighbors who purchased and used them for the purpose of solely harvesting their own grain, and were used on the purchaser's own individual farms and were not sold and not rented out and were not purchased for that purpose. The sale was made at a sum greater than the "ceiling" price. The farmer-purchaser did not bring suit against the neighbor farmer who had sold these combines. The Respondent did bring suit and obtained judgment. This was affirmed by the Circuit Court of Appeals of the Eighth Circuit, except the judgment was vacated and referred back to the District Court for the purpose of determining whether the violation of the price schedule was wilful or because of the failure to take practicable precaution, since the appeal to the Circuit Court of Appeals kept the action pending until an amendment to Section 205, Subdivision "E" of the Emergency Price Act of 1942.

POINTS URGED UPON BY THE PETITIONER.

1. The definition of the clause "for use or consumption other than in the course of trade or business" as used in Section 205, Subdivision "E" of the Emergency Price Act of 1942.

2. Is it a violation of that portion of the Fifth Amendment to the Constitution forbidding taking of property of private individuals without just compensation for the Administrator to bring this suit not as a penalty but as a civil action?

ARGUMENT.

Taking up the first point, namely, the definition. We quote Subdivision "E" of Section 205, of the Emergency Price Act in so far as it is necessary to consider it to determine the meaning of the clause in question.

> "If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorneys' fees and costs as determined by the court."

The purpose of this law among other things as stated in the title, is to check speculation and excessive price rises. To accomplish that purpose, the intention of Congress was undoubtedly to make the violation dangerous for anyone to overcharge. The best method of enforcing such an act is to offer a reward to the person who is in a position to produce the proof against the wrong-doer. That is the exact situation here. This statute provides that the injured person (and that would be just) should recover his money back with penalty, if he, himself, were innocent. That apparently is exactly what this Act intended to do because the statute reads, "the person who buys such commodity for use or consumption" is entitled to sue for three times the amount of the overcharge. However, to take that benefit away from the wrong doer or the one who intended to do wrong, they added a clause as a modification of the clause just quoted "other than in the course of trade or business". That last clause quoted is obviously for the express purpose of depriving a joint feaser who intends

to profit from securing any financial benefit. Our Circuit Court of Appeals in this case has held otherwise and it has been so held by two District Courts.

Bowles v. Rock, 55 Fed. Supp. 865;

Bowles v. Silverman, a South Dakota District Court case reported in OPA Service, 62:538.

CONSTITUTIONAL QUESTION.

This proceeding we believe is in direct violation of the last clause of the Fifth Amendment to the Constitution, which is "nor shall private property be taken for public use without just compensation".

If this judgment is collected they will be taking this Petitioner's private property for public use without any compensation whatsoever to him. This being a civil action does not come within the police power of the Federal Constitution. It has been universally held that this is not a penal statute. Therefore, it comes within the plain English of the quoted clause of the Fifth Amendment.

That protection does not extend to an action by one individual against another so that if these farm-purchasers had sued their farmer-seller, this constitutional prohibition would not apply. That constitutional provision is solely for the protection of the citizen against the taking of his property by the Federal Government without compensation.

We might liken this to the law of exemplory damages, which is familiar to all our states; exemplory damages being a way of punishment from one individual to another may be collected when the conduct has been wilful, malicious and oppressive and even under those extreme conditions, no exemplory or punitive damages may be collected unless there has been some actual damages. In this case, it is the Federal Government, in violation of the constitu-

tional civil guarantee, brings an action for damages, exemplory or punitive and collected them when there has been no actual damages.

We, therefore, submit that the judgment of the Circuit Court of Appeals is erroneous and should be reversed and that the importance of the questions involved, which are so great and the effect so wide spread to be a national act, that those questions should be determined by the highest court in the land to the end that we may all know just what our rights and privileges and immunities may be.

We, therefore, earnestly urge that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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